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#### BEFORE THE POSTAL REGULATORY COMMISSION WASHINGTON, D.C. 20268–0001

COMPETITIVE PRODUCT PRICES

PRIORITY MAIL

PRIORITY MAIL CONTRACT 463

Docket No. MC2018-208

COMPETITIVE PRODUCT PRICES
PRIORITY MAIL CONTRACT 463 (MC2018-208)
NEGOTIATED SERVICE AGREEMENT

Docket No. CP2018-290

# USPS REQUEST TO ADD PRIORITY MAIL CONTRACT 463 TO COMPETITIVE PRODUCT LIST AND NOTICE OF FILING MATERIALS UNDER SEAL

(August 16, 2018)

In accordance with 39 U.S.C. § 3642, 39 C.F.R. § 3020.30 et seq., and 39 C.F.R. § 3015.5, the United States Postal Service requests that Priority Mail Contract 463 be added to the competitive product list within the Mail Classification Schedule. This is a competitive product not of general applicability within the meaning of 39 U.S.C. § 3632(b)(3).

Attachment A is a redacted version of the Governors' Decision, which includes the explanation and justification required by the Commission's rules. Attachment B is a redacted version of the contract. Attachment C shows the requested changes in the Mail Classification Schedule product list, with the additions underlined. Attachment D provides a statement of supporting justification, as required by 39 C.F.R. § 3020.32. Attachment E is a certification of compliance with 39 U.S.C. § 3633(a)(1) and (3). Unredacted versions of the Governors' Decision, contract, and required cost and

revenue data are being filed under seal. Attachment F provides an Application for Nonpublic Treatment of these materials.

As required by 39 U.S.C. § 3642(d)(1), this Request is being published in the Federal Register.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorney:

Elizabeth A. Reed

475 L'Enfant Plaza, SW Washington, D.C. 20260-1137 (202) 268-3179 Elizabeth.A.Reed@usps.gov August 16, 2018

# ATTACHMENT A TO REQUEST REDACTED GOVERNORS' DECISION

DECISION OF THE GOVERNORS OF THE UNITED STATES POSTAL SERVICE ON THE ESTABLISHMENT OF PRICES AND CLASSIFICATIONS FOR DOMESTIC COMPETITIVE AGREEMENTS, OUTBOUND INTERNATIONAL COMPETITIVE AGREEMENTS, AND OTHER NON-PUBLISHED COMPETITIVE RATES (GOVERNORS' DECISION NO. 11-6)

March 22, 2011

#### STATEMENT OF EXPLANATION AND JUSTIFICATION

Pursuant to our authority under section 3632 of title 39, as amended by the Postal Accountability and Enhancement Act of 2006 ("PAEA"), we establish new prices not of general applicability for certain of the Postal Service's competitive service offerings, and such changes in classification as are necessary to implement the new prices.

This decision establishes prices for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates. Domestic Competitive Agreements consist of negotiated service agreements with Postal Service customers for domestic services that are categorized as competitive in accordance with 39 U.S.C. § 3642(b)(1)-(2). Outbound International Competitive Agreements consist of negotiated service agreements with Postal Service customers for outbound international services that are categorized as competitive in accordance with 39 U.S.C. § 3642(b)(1)-(2). Inbound International Competitive Agreements consist of negotiated service agreements with foreign postal operators or other entities for inbound international services that are categorized as competitive in accordance with 39 U.S.C. § 3642(b)(1)-(2). Other Non-Published Competitive Rates consist of rates not of general applicability that are not embodied in contractual instruments, but nonetheless arise from other sources, such as the Universal Postal Convention.

With respect to any product within the above categories, management is hereby authorized to prepare any necessary product description, including text for inclusion in the Mail Classification Schedule, and to present such product description to the Postal Regulatory Commission.

The Postal Accountability and Enhancement Act (PAEA) requires that prices for competitive products must cover each product's attributable costs, not result in subsidization by market dominant products, and enable all competitive products to contribute an appropriate share to the Postal Service's institutional costs. For agreements subject to this Decision, there are hereby established all prices that will cover costs for the relevant product and that conform in all other respects to 39 U.S.C. §§ 3632-3633 and 39 C.F.R. §§ 3015.5 and 3015.7. As discussed in the accompanying management analysis, the Chief Financial Officer (or his delegee(s)) shall certify that all cost inputs have been correctly identified for prices subject to this Decision and that all prices subject to this Decision conform to this Decision and to the requirements of the PAEA.

No agreement, grouping of functionally equivalent agreements, or other classification authorized pursuant to this Decision may go into effect unless it is submitted to the Postal Regulatory Commission with a notice that complies with 39 U.S.C. § 3632(b)(3). On a quarterly basis, management shall furnish the Governors with a report on all non-published rate and classification initiatives. Not less than once each year, the Governors shall review the basis for this Decision and make such further determination as they may deem necessary. This Decision does not affect postal management's obligation to furnish to the Board of Governors information regarding any significant, new program, policy, major modification, or initiative, or any other matter under 39 C.F.R. § 3.7(d), including where such a matter also falls within the scope of this Decision.

This Decision does not supersede or otherwise modify Governors' Decision Nos. 08-5, 08-6, 08-7, 08-8, 08-10, 08-20, 08-24, 09-5, 09-6, 09-7, 09-14, 09-15, 09-16, 10-1, 10-2, 10-3, 10-6, and 10-7, nor does it affect the validity of prices and classifications established under those Decisions. Management may also continue to present to the Postal Regulatory Commission for its review, as appropriate, rate and classification changes to succeed the minimum and maximum non-published rates in Decision Nos. 10-2 and 10-6.

#### ORDER

In accordance with the foregoing Decision of the Governors, the prices set forth herein for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates and the changes in classification necessary to implement those prices, are hereby approved and ordered into effect. An agreement is authorized under this Decision only if the prices fall within this Decision and the certification process specified herein is followed. Prices and classification changes established pursuant to this Decision will take effect after filing with and completion of review by the Postal Regulatory Commission.

By The Governors:

Louis J. Giuliano

Chairman

#### Attachment A

Management Analysis of Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates

This analysis concerns the inbound competitive prices and classifications in the Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates (collectively, "competitive instruments"). Competitive instruments are often negotiated with customers and foreign postal operators for better cost coverage, higher overall contribution, and improved service with respect to postal services classified as competitive. They may also arise from other sources, such as the Universal Postal Convention.

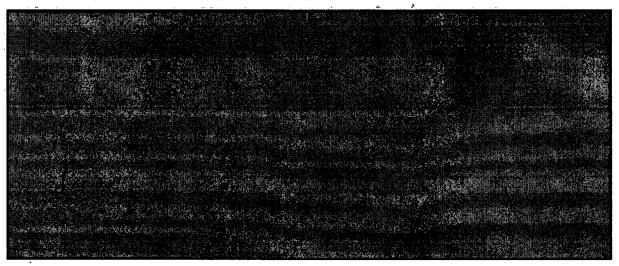
The cost coverage for each competitive agreement or grouping of functionally equivalent instruments (collectively, each "product") will be

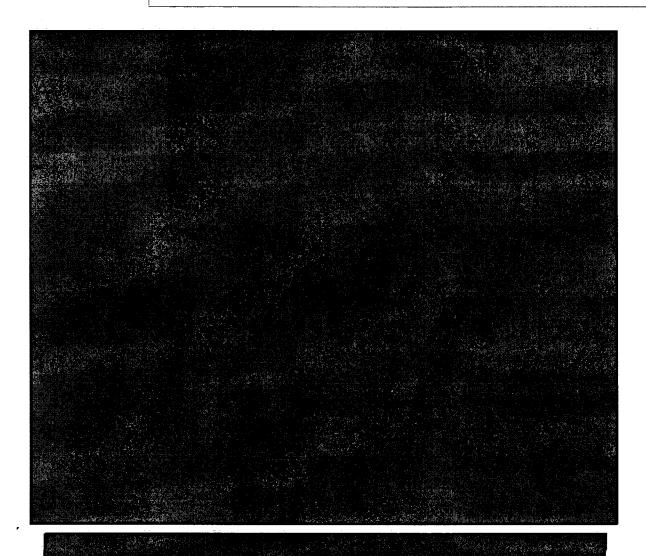
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The cost coverage for a product equals



Each competitive instrument may have multiple price categories and negotiated components. Examples of such categories or components would be Priority Mail, Express Mail, Parcel Return Service, Priority Mail International, Express Mail International, International Priority Airmail, International Surface Air Lift, Inbound Air Parcel Post, Inbound Surface Parcel Post, Inbound Direct Entry, and Inbound International Expedited Services. These or other categories may include other services that the relevant customer or foreign postal operator offers to its customers under differing terms, but that nevertheless are processed and delivered in the same manner within the United States Postal Service's network. Such instruments may also establish negotiated rates for services ancillary to such items and for customized competitive services developed for application solely in the context of the agreement.





Prices established by these formulas should not interfere with competitive products' ability as a whole to comply with 39 U.S.C.§ 3633(a)(3), which, as implemented by (39 C.F.R.§ 3015.7(c)) requires competitive products to contribute a minimum of 5.5 percent to the Postal Service's total institutional costs. Accordingly, no issue of subsidization of competitive products by market dominant products should arise (39 U.S.C.§ 3633(a)(1)).

#### CERTIFICATION OF GOVERNORS' VOTE IN THE GOVERNORS' DECISION NO. 11-6

I hereby certify that the Governors voted on adopting Governors' Decision No. 11-6, and that, consistent with 39 USC 3632(a), a majority of the Governors then holding office concurred in the Decision.

Julie S. Moore

Secretary of the Board of Governors

# ATTACHMENT B TO REQUEST REDACTED SHIPPING SERVICES CONTRACT

# SHIPPING SERVICES CONTRACT BETWEEN THE UNITED STATES POSTAL SERVICE

AND

## REGARDING PRIORITY MAIL SERVICE

This Contract for shipping services is made by and between	a corporation
organized and existing under the laws of with its	principal office at
, on its own behalf and on behalf	of its wholly-owned subsidiaries,
(collectively "Customer"), and the United States Postal Service	, an independent establishment of
the Executive Branch of the United States Government establish	hed by the Postal Reorganization
Act, Public Law 91-375, with its principal office at 475 L'Enfai	nt Plaza, SW, Washington, DC
20260 (the "Postal Service" or "Courier"). The Postal Service	and Customer are referred to
herein collectively as the "Parties" and each as a "Party".	

WHEREAS, it is the intention of the Parties to enter into a Shipping Services Contract ("SSC" or "Contract") that will benefit the Postal Service, the postal system as a whole, and Customer, and that will comply with the requirements of Title 39 United States Code, as amended by the Postal Accountability and Enhancement Act of 2006,

NOW, THEREFORE, the Parties agree as follows:

#### I. Terms

The following terms apply as of the effective date, as defined below:

A. Except to the extent different terms or prices are specified in this Contract, applicable provisions of the Domestic Mail Manual (as may be regularly updated by the Courier and posted at http://pe.usps.com/text/dmm300/dmm300\_landing.htm) and of other postal laws and standards apply to mail tendered under this Contract.

#### B. Duties.

- (i) Delivery/Pick-up Services. During the term of this Agreement, Courier shall provide the delivery/pick-up services to Customer and Customer upon request of Customer (the "Services").
- (ii) The Services shall be performed by qualified personnel who are employees or independent contractors of Courier.
- (iii) Courier agrees to operate within all applicable federal laws and regulations including Postal Service Publication 52.

(iv)	Customer	agrees	to opera	ate within	n all ap	plicable	federal,	state	, and lo	ocal laws
and 1	regulations									
			includ	ling Post	tal Serv	ice Publ	lication 5	52. C	ustom	er must
					ir	accorda	ance wit	h Pub	licatio	n 52.

- (v) Courier and its contractors will have the sole and exclusive control, and custody of the product or supplies to be delivered from the time it is tendered to Courier until the time it is accepted by Customer or Customer.
- (vi) Each Party shall be responsible for the satisfaction of any and all obligations that each, respectively, assumes with respect to any person it retains, employs or contracts with to assist in the performance of this Agreement, including, but not limited to those obligations respecting employee benefits, withholding of federal, state and local taxes, federal and state wage-hour obligations (including overtime), Social Security, workers' compensation, unemployment insurance and contributions to government mandated employment and related insurance and for all employment decisions related to the personnel of the Party, including hiring, firing, and disciplinary.
- C. This Contract applies to Customer's outbound customized Priority Mail polybags originating from Customer's retail locations,

  ("Contract Packages").
- D. Customer will manifest Contract Packages as specified by the Courier, using a separate permit number and/or PC Postage account to ship such packages, and will use the Electronic Verification System ("eVS"), other USPS approved manifest systems, or USPS approved PC Postage vendors for payment of such packages. Customer shall provide the Courier, in writing, a list of its permit numbers and/or PC Postage accounts for approval. Contract pricing for any newly approved permits and/or PC Postage accounts will be effective within fifteen (15) business days after the Courier receives written notification from Customer. Only Contract Packages shipped from authorized permits and/or PC Postage accounts shall count toward the volume commitment in Table B below.
- E. The Courier will provide Customer with customized Priority Mail polybags
  that will be distributed by the Courier to
  agreed upon Customer locations. These customized polybags will then be
  distributed by the Customer to its retail locations.
- F. The Courier will pick up Contract Packages from Customer's retail locations Monday through Saturday (excluding Federal Government observed Holidays) at times

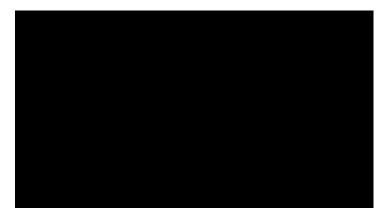
mutually agreed upon by the Parties, provided that the Parties may mutually agree with respect to adjustments to any date(s) and pick up times per location(s).

G. The terms and prices contained herein will take effect on the effective date as defined in Section II. The Contract Quarters are defined below in Table A:

Table A

Period Name	Start of Period	End of Period
Quarter 1	April 1st	June 30 <sup>th</sup>
Quarter 2	July 1st	September 30 <sup>th</sup>
Quarter 3	October 1st	December 31 <sup>st</sup>
Quarter 4	January 1st	March 31st

- H. Contract Prices. Customer shall receive pricing based on Customer's total number of Contract Packages shipped per Contract Quarter, as follows:
  - 1. From the effective date of the Contract until December 31, 2018, Customer shall pay Tier 3 prices pursuant to Table 1 below unless Customer exceeds the Tier 3 volume requirement during any Contract Quarter. Should Customer exceed the Tier 3 volume requirement for any full Contract Quarter through December 31, 2018, Customer will receive the corresponding higher tier price in the subsequent Contract Quarter.
  - 2. Subsequent Prices. Beginning January 1, 2019, Contract prices will be based on Customer's volume of Contract Packages shipped during the previous full Contract Quarter, pursuant to Table B below.
  - 3. The Courier will monitor Customer's volume of Contract Packages, and within fifteen (15) calendar days after the start of each Contract Quarter, will notify Customer of the applicable tier for that Contract Quarter based on Table B below, with corresponding prices found in Table 1 below. Tier price changes will be effective within fifteen (15) calendar days after the start of each Contract Quarter. Discounted prices will be calculated by the Courier and rounded up to the nearest whole cent.



#### I. Price Adjustments

- 1. For subsequent years of the Contract, beginning on the first anniversary of the Contract's effective date, customized prices under this Contract will be the lesser of: (a) the previous year's prices plus the most recent (as of the anniversary date) average increase in prices of general applicability for Priority Mail Commercial Plus, as calculated by the Courier, or (b) the previous year's prices plus
- 2. Customized prices for the subsequent years will be calculated by the Courier and rounded up to the nearest whole cent. If the Courier maintains or decreases published prices of general applicability for Priority Mail Commercial Plus, there shall be no change to Contract pricing for that Contract Year.
- J. Adult Signature Required. Customer will pay the prevailing published rate for Adult Signature Required service, per request, throughout the term of the Contract on Customer's Contract Packages.
- K. Adult Signature Restricted Delivery. Customer will pay the prevailing published rate for Adult Signature Restricted Delivery service, per request, throughout the term of the Contract on Customer's Contract Packages.
- L. Package Intercept. Customer will pay the prevailing published rate for Package Intercept service, per request, throughout the term of the Contract on Customer's Contract Packages.
- M. Signature Confirmation (Electronic). Customer will pay the prevailing published rate for Signature Confirmation service, per request, throughout the term of the Contract on Customer's Contract Packages.
- N. Quarterly Business Reviews. The Parties shall, within fifteen (15) calendar days after the conclusion of each full Contract Quarter in each Contract Year, jointly conduct a business review of Customer's Contract Packages and other performance expectations under this Contract either in person, by telecom, or by webinar. If either Party is unable to conduct a business review within fifteen (15) calendar days after the conclusion of the above referenced Contract Quarters, it shall notify the other Party in writing (i.e. email or mail) of that fact and propose a date as soon as practicable thereafter. The Courier must notify Customer, within fifteen (15) calendar

days after the start of each full Contract Quarter, of the applicable tiered discounts for any Contract Packages shipped during that Contract Quarter. The calculated rate for the new Contract Quarter will become effective within fifteen (15) calendar days from the start of the new Contract Quarter.

O. Record Keeping and Audit. Customer shall respond to the Courier's or its designated auditor's quarterly and/or yearly transaction confirmations related to Courier transactions; and such other assistance as required by the Courier or its designated auditors in connection with Customer's performance under this Contract.

#### II. Regulatory Review and Effective Date

This Contract is subject to approval by Courier senior management, and/or the Governors of the United States Postal Service, as well as, by the Postal Regulatory Commission (the "Commission"). In accordance with Title 39 and the Commission's Rules of Practice and Procedure, the Courier will make required filings with the Commission. The effective date of this Contract shall be two (2) business days following the day on which the Commission issues all necessary regulatory approval. For the purposes of this SSC, business days are defined as Monday through Friday, excluding federal holidays and days on which the Courier Headquarters is administratively closed.

#### III. Cooperation; Compliance with Regulatory Authorities.

Customer and Courier agree to cooperate with one another in the fulfillment of their respective obligations under this Agreement.

#### IV. Firewall.

In accordance with the non-disclosure agreement between the Parties dated August 15, 2015, Courier acknowledges that it will protect Confidential Information (as defined in that agreement) as set forth in that agreement.

#### V. Expiration Date and Termination

This Contract shall expire three (3) years from the effective date, unless (1) terminated by either Party with thirty (30) calendar days' notice to the other Party in writing; (2) renewed by mutual agreement in writing; (3) superseded by a subsequent contract between the Parties; (4) ordered by the Commission or a court; or (5) required to comply with subsequently enacted legislation.

If, at the conclusion of this Contract term, both Parties agree that preparation of a successor SSC is active, this SSC will be extended for up to two (2) ninety (90) calendar day periods with official notification to the Commission at least seven (7) calendar days prior to the Contract's expiration date. Upon both Parties agreement of the extension, the escalation clause will be implemented in Section I.H, throughout the extension period.

#### VI. Appeals

Customer may appeal a Courier decision regarding the calculation of prices, the amount of postage paid, or other implementation or operational issues under this Contract by submitting a written appeal within thirty (30) calendar days of receipt of notification of the determination giving rise to the appeal to: Manager, Pricing and Classification Service Center ("PCSC"), 90 Church Street Suite 3100, New York, NY 10007-2951 ((212) 330-5300 / Fax: (212) 330-5320). The decision of the PCSC Manager will be administratively final. Any decision that is not appealed as prescribed becomes the final Postal Service decision.

#### VII. Insurance

As an independent establishment of the executive branch of the United States Government, the Postal Service does not purchase commercial insurance, but rather, it is authorized to pay proper claims against it, and is subject to suit for damages as described in 39 U.S.C. § 409. Under 39 U.S.C. § 409(c), liability claims against the Postal Service are governed by the Federal Tort Claims Act.

#### VIII. Data Privacy Protection and Information Security

The Postal Service agrees not to disclose the Personally Identifiable Information provided by Customer to the Postal Service pursuant to this Agreement - to third parties, outside of the Postal Service, unless the Postal Service obtains written consent from Customer or such disclosure is otherwise authorized by the Privacy Act of 1974 ("Privacy Act," 5 U.S.C. § 552a) or the Freedom of Information Act ("FOIA," 5 U.S.C. § 552). The Postal Service also agrees to use the Personally Identifiable Information, provided by Customer, only for the purposes set forth in this Agreement, unless otherwise authorized by the Privacy Act or the FOIA. Notwithstanding the foregoing, the Postal Service may disclose Personally Identifiable Information to its employees, contractors and agents on a need to know basis, for the purposes of performance of this contract or as otherwise permitted or required by the Privacy Act, FOIA or other federal law. For the purpose of this Agreement, Personally Identifiable Information shall be defined as any item or grouping of items which personally identify an individual, including but not limited to social security number, name, address, telephone number, or email address. Additionally, the term Personally Identifiable Information includes only information that is contained within a Postal Service electronic database and "system of records" as that term is defined by the Privacy Act (5 U.S.C. § 552a(a)(5)). For the purpose of this Agreement, Personally Identifiable Information will only include data provided to the Postal Service by Customer and not independently obtained by the Postal Service. To the extent permitted by law, the Postal Service will report to Customer, as soon as practicable, any breaches of security or unauthorized access to the Postal Service systems maintaining Customer's Personally Identifiable Information that the Postal Service detects as a high level risk factor or of which it becomes aware in accordance with security access requirements and authorization principles delineated in USPS Handbook AS-805 Information Security (the "Infosec Handbook") (see http://about.usps.com/handbooks/as805.pdf).

#### IX. Confidentiality

- a. The confidentiality obligations of the Parties are set forth in the non-disclosure agreement between the parties, effective August 20, 2015, which is incorporated herein by reference.
- b. Non-Publicity. Each Party agrees that, without the consent of the other Party, the other Party's name or any photo or visual or audio facsimiles of such other Party's facilities or employees shall not be used and (ii) shall not, and its employees, agents, and subcontractors shall not reveal the nature of the Services provided pursuant hereto or any details regarding the Services provided pursuant hereto to any third party, unless required by law.

#### X. Amendments

This Contract shall not be amended except expressly, in writing, by authorized representatives of the Parties.

#### XI. Assignment

Neither Party may, or shall have the power to, assign its rights under the Contract or, delegate its obligations hereunder, without the prior consent of the other; such consent is not to be unreasonably withheld. In addition, in the event that Customer is merged with or into or acquires another entity, pricing under this Contract following such merger or acquisition shall apply only to mail sent by the entity existing prior to the merger or acquisition. Following any such merger or acquisition, the parties may negotiate in good faith to extend, modify or enter into a new contract applicable to the merged or acquired entity.

#### XII. Waiver

Any waiver by a Party shall not constitute a waiver for any future occurrence. No waiver shall be valid unless set forth in a writing executed by the Party waiving such provision.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be duly executed as of the later date below:

#### UNITED STATES POSTAL SERVICE

Signed by: Dennis Nicoski (Aug 8, 2018)

Printed Name: Dennis Nicoski

Title: Senior Vice President, Sales and Customer Relations

Date: Aug 8, 2018



MAIL CLASSIFICATION SCHEDULE
PART B—COMPETITIVE PRODUCTS
2000 COMPETITIVE PRODUCT LIST

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## NEGOTIATED SERVICE AGREEMENTS Domestic

**Priority Mail Contract 463** 

#### **Statement of Supporting Justification**

- I, Dennis R. Nicoski, Senior Vice President (A), Sales and Customer Relations, am sponsoring this request that the Commission add Priority Mail Contract 463 to the list of competitive products. This statement supports the Postal Service's request by providing the information required by each applicable subsection of 39 C.F.R. § 3020.32. I attest to the accuracy of the information contained herein.
- (a) Demonstrate why the change is in accordance with the policies and applicable criteria of the Act.

As demonstrated below, the change complies with the applicable statutory provisions.

(b) Explain why, as to the market dominant products, the change is not inconsistent with each requirement of 39 U.S.C.§ 3622(d), and that it advances the objectives of 39 U.S. C.§ 3622(b), taking into account the factors of 39 U.S. C.§ 3622(c).

Not applicable. The Postal Service is proposing that this Priority Mail contract be added to the competitive products list.

(c) Explain why, as to competitive products, the addition, deletion, or transfer will not result in the violation of any of the standards of 39 U.S.C. 3633.

The service to be provided under the contract will cover its attributable costs and make a positive contribution to coverage of institutional costs. The contract will increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. Accordingly, no issue of subsidization of competitive products by market dominant products arises (39 U.S.C. § 3633(a)(1)).

(d) Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can without risk of losing a significant level of business to other firms offering similar products: (1) set the price of such product substantially above costs, (2) raise prices significantly; (3) decrease quality; or (4) decrease output.

The contract sets specific terms and conditions for providing Priority Mail to the customer. Priority Mail service is provided in a highly competitive market. The Postal Service is unable to set prices substantially above costs, raise prices significantly, decrease quality, or decrease output, without losing this business to private competitors in the expedited shipping market.

In negotiating this contract, the Postal Service's bargaining position was constrained by the existence of other providers of services similar to the Postal Service's. As such, the market precludes the Postal Service from taking unilateral action to increase prices or decrease service. As with Priority Mail in general, the Postal Service may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. The market does not allow the Postal Service to raise prices or offer prices substantially above costs; rather, the contract is premised on prices and terms that provide sufficient incentive for the customer to ship with the Postal Service rather than a competitor.

(e) Explain whether or not each product that is the subject of the request is covered by the postal monopoly as reserved to the Postal Service under 189 U.S.C. 1696, subject to the exceptions set forth in 39 U.S.C. 601.

I am advised that merchandise sent by Priority Mail and this contract are not covered by these provisions. See part (d) above.

(f) Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product.

See part (d) above. Expedited shipping, similar to Priority Mail, is widely available from well-known and successful private firms at both published and contract prices.

(g) Provide any available information of the views of those who use the product on the appropriateness of the proposed modification.

Having entered into this contract with the Postal Service, the customer supports the addition of the contract to the product list so that the contractual terms can be effectuated.

(h) Provide a description of the likely impact of the proposed modification on small business concerns.

The market for expedited delivery services is highly competitive and requires a substantial infrastructure to support a national network. Large shipping companies serve this market. The Postal Service is unaware of any small business concerns that could offer comparable service for this customer.

(i) Include such other information, data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.

Additional details regarding the terms of the contract have been provided to the Commission under seal due to the sensitivity of the contract to both the customer and the Postal Service.

#### **Certification of Prices for Priority Mail Contract 463**

I, Steven R. Phelps, Manager, Regulatory Reporting and Cost Analysis, Finance Department, am familiar with the prices and terms for Priority Mail Contract 463. The prices and terms contained in this Contract were established by the Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates (Governors' Decision No. 11-6).

I hereby certify, based on the financial analysis provided herewith, that the prices are in compliance with 39 U.S.C § 3633 (a)(1), (2), and (3). They are expected to cover attributable costs. There should therefore be no subsidization of competitive products by market dominant products. This contract should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.

Steven Phelps
DN: cn=Steven Phelps, o=Pricing and Costing, ou=Pricing, email=steven.r.phelps@usps.gov, c=US Date: 2018.08.15 1645:15 -0400°

Steven R. Phelps

## APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT OF MATERIALS

In accordance with 39 C.F.R. Part 3007, the Postal Service hereby applies for non-public treatment of: the unredacted Governors' Decision; the unredacted shipping services contract; and the supporting documents establishing compliance with 39 U.S.C. § 3633 and 39 C.F.R. § 3015.5. The Postal Service hereby furnishes the justification required for this application by each subsection of 39 C.F.R. § 3007.201(b), as enumerated below.

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials.

(1) The rationale for claiming that the materials are non-public, including the specific statutory provision(s) supporting the claim, and an explanation justifying application of the provision(s) to the materials.

The materials designated as non-public consist of information of a commercial nature, which under good business practice would not be publicly disclosed. In the Postal Service's opinion, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3), (b)(4).¹ Because the portions of the materials which the Postal Service is applying to file only under seal fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

Information of a commercial nature, which under good business practice would not be publicly disclosed, as well as third party business information, are not required to

<sup>&</sup>lt;sup>1</sup> In appropriate circumstances, the Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C.§ 504(g)(3)(A). The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

be disclosed to the public. 39 U.S.C. § 410(c)(2); 5 U.S.C. § 552(b)(4). The Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A).<sup>2</sup> Because the portions of materials filed non-publicly in this docket fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

(2) A statement of whether the submitter, any person other than the submitter, or both have a proprietary interest in the information contained within the non-public materials, and the identification(s) specified in paragraphs (b)(2)(i) through (iii) of this section (whichever is applicable). For purposes of this paragraph, identification means the name, phone number, and email address of an individual.

The Postal Service believes that the customer with whom the contract is made has a proprietary interest in the non-public materials and that customer-identifying information is sensitive and should be withheld from public disclosure. Therefore, rather than identifying the customer, the Postal Service gives notice that it has already informed the customer, in compliance with 39 C.F.R. § 3007.200(b), of the nature and scope of this filing and its ability to address its confidentiality concerns directly with the Commission. The Postal Service employee responsible for providing notice to the third party with proprietary interest in the materials filed in this docket is Elizabeth A. Reed, Attorney, 475 L'Enfant Plaza SW, Washington, D.C. 20260-1137, whose email address is Elizabeth.A.Reed@usps.gov and whose telephone number is 202-268-3179.

(3) A description of the information contained within the materials claimed to be non-public in a manner that, without revealing the information at issue,

<sup>&</sup>lt;sup>2</sup> The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

## would allow the Commission to thoroughly evaluate the basis for the claim that the information contained within the materials are non-public.

The Governors' Decision establishing Domestic Competitive contracts, including those for Priority Mail, the contract identifying the customer and containing the prices, terms, and conditions of the contract, and the financial workpapers supporting the contract are being filed under seal in this docket. Redacted copies of the Governors' Decision and the contract are being filed publicly in this docket. The Postal Service maintains that the redacted portions of the Governors' Decision, the contract, name of the customer and related financial information should remain confidential.

With regard to the contract, the redactions are of the name, address, signature block, and other information that could identify the customer; such identifying information of a postal patron may be withheld from mandatory public disclosure by virtue of 39 U.S.C. § 504(g)(1) and 39 U.S.C. § 410(c). Also redacted are the negotiated price structure and the terms directly related to implementation of the price structure.

The redacted portions of the Governors' Decision and attached Analysis protect the costs authorizing Domestic Competitive contracts, and the analysis of those costs.

The redactions applied to the financial work papers protect commercially sensitive information such as underlying costs and assumptions, pricing formulas, information relevant to the mailing profile of the customer, and cost coverage projections. To the extent practicable, the Postal Service has limited its redactions in the workpapers to the actual information it determined to be exempt from disclosure under 5 U.S.C. § 552(b). However, in a limited number of cases, narrative passages or notes were redacted in their entirety due to the practical difficulties of redacting particular words or numbers within the text as presented in a spreadsheet format.

## (4) Particular identification of the nature and extent of the harm alleged and the likelihood of each harm alleged to result from disclosure.

If the redacted information were to be disclosed publicly, the Postal Service considers that it is quite likely that it and the customer would suffer commercial harm.

The information is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices.

Revealing this information would provide a competitive advantage to competitors of the Postal Service and of the customer. The Postal Service considers that it is highly probable that if this information were made public, such entities would take immediate advantage of it and there is a substantial risk that the Postal Service and the customer would lose business as a result. Additionally, other postal customers could use the information to their advantage in negotiating the terms of their own agreements with the Postal Service and other businesses could use the information to their advantage in negotiating with the customer. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

Finally, the financial work papers include specific information such as costs, negotiated prices and pricing structure, assumptions used in developing costs and prices, mailer profile information, and projections of variables. All of this information is highly confidential in the business world. If this information were made public, the Postal Service's and the customer's competitors would likely take great advantage of this information. Unlike its competitors, the Postal Service is required to meet the standards of 39 U.S.C. § 3633 with each negotiated service agreement that it asks to have added to the competitive products list. Competitors are not so constrained and could use the redacted information to their advantage in gaining customers. The formulas shown in the spreadsheets in their native format provide additional sensitive information. Revealing the Postal Service's profit margin information could also be used by the customer to attempt to renegotiate its own prices.

### (5) At least one specific hypothetical, illustrative example of each alleged harm.

Identified harm: Revealing customer identifying information would enable competitors to target the customers for sales and marketing purposes.

Hypothetical: The identity of the customer in this contract is revealed to the public. A competitor's sales representatives contact the Postal Service's customer and

offer the customer lower prices or other incentives, taking away the business anticipated by the Postal Service.

Identified harm: Public disclosure of negotiated terms of the agreement could be used by competitors and potential customers to the detriment of the Postal Service and its customer.

Hypothetical: A competitor obtains a copy of the unredacted version of Customer A's contract and workpapers to the detriment of the Postal Service's customer. Company B discovers proprietary business strategies and changes its business practices to minimize differentiation, identify their key customer base and cause defection of Customer A's customers. Customer A cancels the contract and withdraws their business from the Postal Service. Other companies would then refuse to share critical details of their business or to participate in negotiated prices with the Postal Service, harming the Postal Service's ability to compete in the marketplace for additional volume and revenue.

Hypothetical: The competitor could leverage multiple services to offer deeper discounts than provided by the Postal Service's contract as a loss leader, using profits on other products profits to make up for the temporary loss.

Identified harm: Public disclosure of the price formula, underlying cost structure, and information in the financial work papers relating to the contract would be used by competitors and customers to the detriment of the Postal Service.

Hypothetical: A competing package delivery service or its representative obtains a copy of the unredacted version of the financial work papers. It analyzes the work papers to determine what the Postal Service would have to charge its customers in order to meet its minimum statutory obligations for cost coverage and contribution to institutional costs. It then sets its own rates for products similar to what the Postal Service offers its customers under that threshold and markets its ability to guarantee to beat the Postal Service on price for similar delivery services.

Hypothetical: Competitors constantly monitor "cost to serve" scenarios to combine and alter facilities to lower costs. A competitor could add satellite pickup stations closer to the Postal Service's customer in order to underbid the Postal Service's prices.

Identified harm: Public disclosure of the prices and related terms would provide potential customers extraordinary negotiating power.

Hypothetical: Customer B obtains the contract showing Customer A's negotiated prices and the underlying workpapers. Customer B can determine that there is additional profit margin between the prices provided to Customer A and the statutory cost coverage that the Postal Service must produce in order for the agreement to be added to the competitive products list. Although Customer B was offered prices identical to Customer A's, Customer B uses the publicly available information to insist that it unless the Postal Service offers it even lower prices than Customer A's, it will not use the Postal Service but will give its business to a competitor of the Postal Service.

Alternatively, Customer B attempts to negotiate lower rates only for those destinations for which it believes the Postal Service is the low-cost provider among all service providers. The Postal Service may agree to this demand in order to keep the customer's business overall, which it believes will still satisfy total cost coverage for the agreement. Then, Customer B uses other providers for destinations other than those for which it negotiated lower rates. This impacts the Postal Service's overall projected cost coverage for the agreement. Although the Postal Service can terminate the contract when it sees that the mailer's practice and projected profile are at variance, the costs associated with establishing the contract, including filing it with the Postal Regulatory Commission, would be sunk costs that would have a negative impact on postal finances.

Harm: Public disclosure of information in the financial work papers would be used by the customer's competitors to its detriment.

Hypothetical: A business in competition with the customer obtains a copy of the unredacted version of the financial work papers. The customer's competitor analyzes the work papers to assess the customer's underlying shipping costs. The customer's competitor uses that information as a baseline to negotiate with shipping companies and other suppliers to develop lower-cost alternatives and thereby to undercut the customer.

#### (6) The extent of the protection from public disclosure alleged to be necessary.

The Postal Service maintains that the redacted portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in the market for domestic parcel shipping products, as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for such products should not be provided access to the non-public materials.

## (7) The length of time for which non-public treatment is alleged to be necessary with justification thereof.

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless otherwise provided by the Commission. 39 C.F.R. § 3007.401(a). However, because the Postal Service's relationships with customers often continue beyond ten years, the Postal Service intends to oppose requests for disclosure of these materials pursuant to 39 C.F.R. § 3007.401(b-c).

(8) Any other relevant factors or reasons to support the application.

None.